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CORRESPONDENCE.

CORPORATION COMMISSION—ISSUING CHARTERS A MINISTERIAL ACT.

Editors Virginia Law Register:

From numerous inquiries, and the manner in which many certificates are drawn that are presented to the State Corporation Commission for its action, it is manifest there is a misapprehension amongst many of the profession as to the functions and powers of the Commission in the matter of chartering corporations, and of the radical departure that has been made in our corporation laws.

Thinking it might be of some interest to the profession, I give you herewith some views in the premises for what they may be worth, which have been suggested to me by observation and experience in the practical operations of our corporation laws, and shall feel fully repaid if they result in directing the attention of the profession to this very important matter.

The Commission was created by section 155 of the present Constitution; which also provides in section 154 that "The creation of corporations, and the extension and amendment of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment or extension applied for, and to *issue*, or refuse, the same accordingly . . ."

Sub-section (a) of section 156 of the Constitution provides that, "Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be *issued* all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State . . ."

Pursuant to constitutional requirement the General Assembly passed an act, entitled, "An Act Concerning Corporations," which became a law on the 21st of May, 1903. This act provides for the incorporation of companies, through this department, and prescribes what the certificate or application for incorporation shall set forth; and also what shall be the general attributes and powers of corporations chartered under the act. It will be observed that the Constitution, and act in pursuance thereof, both prescribe that the Commission shall *issue* (not grant) or refuse, the certificate of incorporation, as the case may be. The statute imposes upon the Commission the duty of ascertaining whether or not the applicants have, in

their certificate for incorporation, complied with the requirements of the law, and clearly makes it mandatory upon the Commission to issue a certificate of incorporation, provided the applicants show compliance with the requirements of the law in their certificate for incorporation, or articles of association (as it is called in some of the chapters of the act), which they present to the Commission.

The Commission does not grant charters in the sense that is done by a legislature. Its certificate of incorporation is nothing more than a certification by it that the parties applying for a charter show by their certificate for incorporation that they have complied with the requirements of the law, and are therefore entitled to incorporation. It is, of course, the further duty of the Commission to ascertain that they have paid the fees and taxes required by law to be paid, the payment of which is a condition precedent to the Commission taking any action on the application.

The incorporators acquire, under the Commission's certificate of incorporation, no right or power except such as are given to them under the special and general provisions of our corporation laws, and any provision in the charter not warranted by the laws aforesaid is without force or effect, notwithstanding the certificate of incorporation issued by the Commission. In other words, the Commission in issuing a certificate of incorporation acts, in my opinion, *ministerially*, and upon its refusal to issue the certificate when the application shows on its face full compliance with all the requirements of the law, it could be compelled so to do by mandamus from the Supreme Court of Appeals on petition filed for the purpose. If the duty is a *ministerial* and not a judicial act, I take it that the petition for mandamus would be the proper procedure, notwithstanding the fact that the Constitution and the statutes specify and provide for *appeals* from any action of the Commission, because in sub-section (d) of section 156 of the Constitution, dealing with the matter of remedies from the action of the Commission, it is provided that the writ of mandamus shall lie from the Supreme Court of Appeals to the Commission in all cases where such writ would lie to any inferior tribunal or officer.

Very respectfully,

Richmond, Va.

ALEXANDER SIDNEY LANIER.

JUDGMENTS—CAN THEY BE PERPETUALLY KEPT ALIVE?—SECTION 3577 OF CODE.

Editors Virginia Law Register:

In the opinion of the writer, the question of whether a judgment may be perpetually kept alive by the issuance of executions thereon, has been decided in the affirmative very recently by our highest court. This question has been much discussed, and judges and able lawyers have disagreed over its solution. See 15 Va. Law Journal, pp. 273, 341, 377 and 445; 5 Va. Law Reg., pp. 672 and 861, and Barton's Law Prac. 790, note for these views.—Prof. Davies and Judge Nicol saying that it is barred after twenty years, and cannot be kept alive, and Prof. Lile and Mr. Barton asserting the con-